IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 8397 of 2004(Y)

PETITIONER:

ANANDAVALLY AMMA
W/O. LATE V.CHELLAPPAN PILLAI,
KARUVELIL, WARD NO.VI, PARAVOOR P.O.,
ALAPPUZHA DISTRICT.

BY ADV. SRI.K.K.SATHISH.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF HOME AFFAIRS FREEDOM FIGHTERS' DIVISION, KHAN MARKET, LOK NAYAK BHAVAN, NEW DELHI -110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATIVE (FFP.A) DEPARTMENT, THIRUVANANTHAPURAM.**

BY ADV. SRI.N.NAGARESH, ADDL.CGSC FOR R1,
GOVERNMENT PLEADER SRI. V.T.K. MOHANAN FOR R2,
SRI.P.PARAMESWARAN NAIR,ASST.S.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8397/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER OF SANCTION OF STATE PENSION TO THE PETITIONER'S LATE HUSBAND ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA VIDE ORDER NO. R. DIS. 22003/74/F6 DT. 01/06/1974.

EXT.P.2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DTD. 26/04/1998.

EXT.P.3: COPY OF THE PKC ISSUED BY SRI. KUNJAN SUKUMARAN DT. 21/04/1998.

EXT.P.4: COPY OF THE LETTER NO. 43703/FFP. A2/03/GAD DT. 19/09/2003 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DT. 04/02/04 TO THE R.2.

EXT.P.6: COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANI DT. 09/01/2004.

EXT.P.7: COPY OF THE NARC ISSUED BY THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA.

EXT.P.8: COPY OF THE ORDER OF SSS PENSION TO SRI. H.K. CHAKRAPANI ISSUED BY THE R.1.

EXT.P.9: COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. IN RESPECT OF CONVICT NO. 3788 VIZ. SRI. H.K. CHAKRAPANI.

EXT.P.10: COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE-II DTD. 03/01/2004.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 8397 of 2004-Y.

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Dated this the 20th day of August, 2007.

J U D G M E N T

The petitioner is an applicant for grant of Swathantrata Sainik Samman pension. She is the widow of a freedom fighter Sri.V.Chellappan Pillai who had actively participated in the Punnapra-Vayalar struggle which is recognised for the purpose of grant of SSS pension from 20.1.1998. It is stated that an arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in Case No.P.E.7/1122 M.E. and he had gone underground for a period of more than 23 months from October, 1946 to September, 1948. The petitioner's late husband was granted State pension as per Ext.P1 dated 1.6.1974. Ext.P2 is the application submitted by the petitioner for grant of SSS pension which is dated 26.4.1998. It is also stated that initially the petitioner had produced the personal knowledge certificate issued by a prominent freedom fighter Sri.Kunjan Sukumaran (Ext.P3).

2. By Ext.P4 communication she was informed that the application could not be recommended for want of certain documents. What was required by Ext.P4 was that the petitioner shall produce either records from the court to prove the underground suffering or in its absence non-availability of records certificate and a personal knowledge certificate issued by a

prominent freedom fighter who had undergone imprisonment for a minimum period of two years. Thereafter by Ext.P5 the petitioner produced Ext.P6 personal knowledge certificate issued by Sri.H.K.Chakrapani. Ext.P7 is the non-availability of records certificate issued from the Chief Judicial Magistrate Court, Alappuzha. Ext.P8 is the order granting SSS pension to Sri.H.K.Chakrapani and Ext.P9 is the true extract of the convict register of Central Prison, Thiruvananthapuram relating to Sri.H.K.Chakrapani. Ext.P10 is the affidavit signed before the Judicial First Class magistrate-II, Alappuzha. It is, therefore, submitted that she has complied with the requirement of Ext.P4. But still the application is not being recommended.

3. In the counter-counter affidavit filed on behalf of the Union of India it is stated that the application of the petitioner was sent to the State Government as per letter dated 20.10.1998 for their mandatory verification-cum-entitlement to pension report and the requisite report is still awaited from the State Government. In the counter-affidavit filed on behalf of the 2nd respondent it is averred that the non-availability of records certificate cannot be accepted; in the absence of it, personal knowledge certificate is not relevant and that Sri.Kunjan Sukumaran has not mentioned the case number in the certificate. The approach made by the State Government is far from satisfactory. Going by Ext.P4 she was asked to produce, in the absence of the official records the non-availability of records, certificate as well as the

personal knowledge certificate from a competent certifier. She had produced the personal knowledge certificate of Sri.H.K.Chakrapani along with order granting SSS pension to him and also the extract of the convict register in respect of him. In spite of that an observation is made in the counter-affidavit that the Central Government had sanctioned pension to him by giving benefit doubt. It is not the province of the State Government to sit in appeal on the order sanctioning pension to a freedom fighter by the Union of India which obviously has been granted after due recommendation by the State Government and after verification of all records by the Central Government also. Therefore, it is clear that the approach reflected in the counter-affidavit is too technical and against the dictum laid down by the Apex Court in *Gurdial Singh v. Union of India* (2001(8) SCC 8) and other decisions. A freedom fighter is entitled for respect and honour. This is a case where recognising his sufferings the State Government has granted pension way back in 1974 which is being continued in favour of the wife. Still unmerited objections have been pointed out to withhold the recommendation to the Central Government.

4. The reasons stated in the counter-affidavit are therefore not satisfactory for not recommending the case of the petitioner for grant of pension by the Central Government. Objection placed by relying on the certificate issued by Shri.Kunjan Sukumaran is also of no value since

subsequent to that Ext.P6 certificate from Sri.H.K.Chakrapani has been produced which alone is sufficient to support the claim. The requirement as per Ext.P4 is to produce certificate from a prominent freedom fighter who was imprisoned at least for two years. That has been satisfied after the production of Ext.P6.

5. Therefore, the 2nd respondent is directed to forward due recommendation of the application of the petitioner to the Central Government within a period of six weeks from the date of receipt of a copy of this judgment and the first respondent is directed to pass fresh orders considering all the aspects especially in the light of the observations contained herein within a further period of three months from the date of receipt of records from the State Government. The first respondent shall also consider the claim for grant of arrears from the date of receipt of Ext.P2 application dated 26.4.1998.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-